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FILED
APR 6 1965
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 939

CARLOS M. AULET,

Petitioner.

VS.

UNITED STATES OF AMERICA,

Respondent.

Petition For Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

REPLY TO MEMORANDUM OF RESPONDENT IN OPPOSITION.

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Petitioner, Carlos Aulet pursuant to Rule 24 (4) of this Court, replies to the Memorandum for The United States in Opposition, as follows:

1. The petition for certiorari is timely filed for the reason that no complete appealable judgment of the Court Below was entered on January 22, 1965 at the time of

the announcement of the denial of the petition for rehearing in that Court, by reason of it's own Rule 28. Rule 28 is as follows:

"Mandate"

Rule 28. (a) Issuance. Unless otherwise ordered, mandate shall issue as of course 20 days after the entry of judgment unless delayed by the filing of a petition for rehearing within that period. If such petition for rehearing be denied, mandate shall issue 5 days thereafter; if granted, no mandate shall issue until final disposition of the cause.

(b) Stay. A stay of mandate granted pending application for certiorari to the Supreme Court of the United States, shall not exceed 30 days unless extended by order of this Court or a judge thereof. However, if within such 30 days, or within any duly allowed extension thereof, there is filed with the clerk of this court a certificate of the clerk of the Supreme Court certifying that the certiorari petition, record and brief have been filed, the stay shall continue until final disposition by the Supreme Court. Upon the filing of a copy of an order of the Supreme Court denying the writ of certiorari, the mandate shall issue.

By Rule 28 the judgment below could not become, and was not complete or effective, until five days after January 22, 1965, and the petition herein was filed within 30 days after the effective date of the denial of the petition for rehearing, pursuant to Rule 22(2) of this Court.

That, part of a court's judgment is the court's mandate, is established by the decision of this Court of the problem of when a judgment of a court of appeals be-

came final and appealable where the mandate directed further proceedings in the court below. *Rogers* v. *Hill*, N.Y., 1933, 289 U.S. 582, 587, 53 S. Ct. 731, 77 L. Ed. 731.

The Court's attention is invited to the fact that the mandate in the instant case could not issue as part of the court's judgment until five days after the date of the denial of the petition for rehearing, and that this five day period is part of the judgment of the denial of the petition.

All other contentions of Respondent are adequately answered in the petition and record filed therewith.

Respectfully submitted,

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and

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